LE COPY

FILED

In the Supreme Court of the United States

OCTOBER TERM, 1964

No. 550

LAWRENCE Y. S. AU and WRONA K. H. AU,
PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNTED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

This case involves the valuation, for depreciation purposes, of an automobile purchased by taxpayer Lawrence Y. S. Au [1] for $2,500 in 1950, used for personal purposes for about six years, and converted to business use in 1957. On his 1957 return, taxpayer

---

[1] Taxpayer Wrona, the wife of Lawrence, had no separate income and is a taxpayer solely because a joint return was filed.

used the original cost of $2,500 as his basis for depreciation. The Commissioner determined that the fair market of the automobile, when converted to business use in 1957, was $650. The question presented is whether the court below erred in sustaining the Tax Court's finding that the fair market value of the automobile for depreciation purposes was $650 (as the Commissioner determined) rather than the $2,500 value for which the taxpayer is contending.

Taxpayer recognizes (Pet. 2) that where (as here) a non-business asset is converted to business use, its basis for depreciation is the fair market value at the time of the conversion. Treasury Regulations on Income Tax (1954 Code), Section 1.167(f)-1. The Commissioner's determination that the automobile had a fair market value in 1957 of $650 is presumptively correct, and the burden of proving it wrong rested on the taxpayer. *Commissioner* v. *Hansen*, 360 U.S. 446, 468. In upholding the Commissioner's determination, the Tax Court found as a fact that, in 1957, "Plymouth automobiles of the model and type herein involved were being offered for sale in the Honolulu area, and could be purchased in good condition for less than $650. The Official Guide used in the Hawaii area representing the average of used car prices reflected the average retail price of 1950 Plymouth automobiles at less than $650. * * * The fair market value of the 1950 Plymouth automobile was not in excess of $650 when it was converted to business use in 1957." (R. 23.)

There is plainly no occasion to depart in this case from the precept that this Court will not ordinarily

review concurrent findings of fact. *Comstock* v. *Group of Investors*, 335 U.S. 211, 214. The only testimony offered by taxpayer on the valuation question was that of his brother who stated that the car was in very excellent condition and was worth $2,500 at the time it was converted to business use. (R. 69, 73.) The contention that a six year old car is worth as much as it was when new is contrary to all experience. Nor is it claimed that the taxpayer's brother was an expert on the valuation of automobiles.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

OCTOBER, 1964.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 747508 312